IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

RSA.No. 327 of 2007()

(AGAINST THE JUDGMENT AND DECREE DATED 30.5.2006 IN AS.59/2003 ON THE FILE OF THE ADDL. DISTRICT AND SESSIONS JUDGE, VADAKARA ARISING FROM THE JUDGMENT DATED 31/5/2003 PASSED IN OS.13/2002 ON THE FILE OF THE MUNSIFF'S COURT, NADAPURAM)

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APPELLANT/APPELLANT/PLAINTIFF:

PULIYULLATHIL AMMALU AMMA,
D/O CHIRUTHEYI AMMA, AGED 75 YEARS,
SWASTHAM, NARIPPATTA AMSOM DESOM,
VATAKARA TALUK, KOZHIKODE.

BY ADV. SMT.PRABHA R.MENON
SRI.M.KRISHNAKUMAR

RESPONDENT: RESPONDENT/3RD DEFENDANT:

CHATHAMKOT K.C.RAVEENDRAN,
S/O KUNHIKANNAN NAMBIAR, AGED 45 YEARS,
GOVERNMENT EMPLOYEE, NARIPPATTA AMSOM DESOM,
VATAKARA TALUK, KOZHIKODE.

BY

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 10/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.NO.731/2007 IN R.S.A.NO.327/2007

DISMISSED

10/07/2007 **SD/- M.SASIDHARAN NAMBIAR, JUDGE**

/TRUE COPY/

P.S.TO JUDGE

KSS

M.SASIDHARAN NAMBIAR,J.

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R.S.A. NO. 327 OF 2007

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Dated this the 10th day of July, 2007

JUDGMENT

Plaintiff in O.S.13/2002 on the file of Munsiff Court, Nadapuram is the appellant. Respondent is the third defendant in the suit. Appellant instituted the suit against four defendants, including the respondent contending that they attempted to trespass into the plaint schedule property and constructed a road without his consent and committed damages and therefore they are to be restrained by a permanent prohibitory injunction. Appellant also sought a decree for damages contending that defendants committed damages by cutting trees and constructing a road. Respondent alone filed a written statement. Other defendants remained absent and were set ex parte. Learned Munsiff on the evidence of Pws.1 and 2, Dws.1 and 2 and Exts.A1 to A6 and C1 and C2 granted a decree as against the defendants 1, 2 and 4 and dismissed the

suit as against respondents/third defendant holding that there is no evidence to prove that respondent committed any damage to the plaint schedule property and evidence only establish that mischief was committed by the other defendants and there was no cause of action as against the respondent. Appellant challenged the decree dismissing the suit as against the respondent before Additional District Court, Vadakara in A.S.59/2003. Learned Additional District Judge on reappreciation of evidence confirmed the findings of the learned Munsiff and dismissed the appeal. It is challenged in the second appeal.

2. Learned counsel appearing for appellant was heard.

3. The argument of learned counsel appearing for appellant is that in his written statement appellant admitted that he had attended the meeting convened by defendants 1 and 2 and also that he was elected as one of the executive members of the Committee which decided to make a road and in such

circumstance, the finding that there is no cause of action as against the respondent is not sustainable and on the evidence courts below should have granted a decree against respondent also..

4. On hearing learned counsel appearing for appellant, I do not find any substantial question of law involved in the appeal.

5. The case of respondent in the written statement was only that he was invited by defendants 1 and 2 to attend the meeting and he was forced to be one of the executive members and he did not do anything more and he did not participate in any other programme. He did not contend that defendants have a right to construct the road or that he aided the other defendants to construct the road. Appreciating the evidence of Pws.1 and 2 and DW1 the trial court and the first appellate court found that there is no evidence to connect the respondent with the attempted trespass or the attempt to construct the road. In such circumstance, the suit as against him was

dismissed. The factual findings of the courts below that there is no cause of action as against the respondent cannot be interfered in the light of the evidence in exercise of the powers of this court under section 100 of Code of Civil Procedure. As no substantial question of law is involved in the appeal, appeal is dismissed in limine. It is made clear that if there is any reasonable apprehension of a trespass by respondents in future, dismissal of the suit will not prevent the appellant from seeking appropriate relief against the respondent.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006